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Karen Mitchell Democrat and Chronicle

Five of the Topfree 7 walking jubilantly from the courtroom of Judge Herman Walz after the close of their civil disobedience trial. From left: Nikki Craft, Lynn Zicari, Ramona Santorelli, Deborah Seymour, Mary Lou Schloss.

Topfree 7 got their point across

Breast-baring women say public took notice of law, women's rights

By John O'Brien
Democrat and Chronicle

Win or lose, the women of Rochester's Topfree 7 say they've made their point.

With the completion of their four-day trial in City Court yesterday, the public is finally taking seriously their claim that women have as much right as men to take off their shirts wherever they want, the women say.

City Judge Herman J. Walz said he will not decide the case of the women, who are challenging a state indecent exposure law, for at least another two months, after lawyers are scheduled to give oral arguments on the constitutionality of the law.

The women have moved for dismissal of the case, claiming the law is unconstitutional.

"It's not the least we've done by getting the public to take us seriously — that's the most important thing we've done," said Mary Lou Schloss, a defendant who represented herself.

After five people, including two of the defendants, finished giving summations shortly after noon yesterday, the women hugged each other and their lawyers, David R. Moss and Assistant Public Defender Lawrence L. Kasperek.

"I think we've given women an opportunity to look at themselves in a way they never have before," said defendant Deborah Seymour outside the courtroom as the women were surrounded by reporters and photographers.

"It's not a matter of winning or losing

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Judge of Topfree 7 says case damaged run for Supreme Court

By John O'Brien
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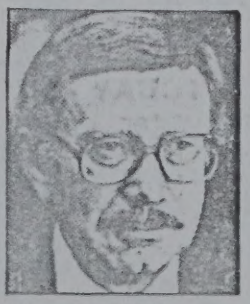

Herman Walz

Rochester City Court Judge Herman J. Walz said yesterday he believes the trial of the Topfree 7 has damaged his campaign for state Supreme Court.

Although Walz will not decide the case before

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Topfree defendants made their point

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— it's what we accomplished in the struggle that counts," said Nikki Craft, one of the defendants and a nationally known women's rights activist. "I think that what we've done is instill a style and rebelliousness in women to not sit back and accept their place as second-class citizens."

In an unusual ruling, Walz allowed Craft, of Oshkosh, Wis., to give a closing argument yesterday because she demonstrated she was "perfectly capable of speaking for yourself."

Craft, who often broke into tears during her summation, used ear muffs to illustrate her argument against the claim that the state law protects women from sexual violence.

"I'm very turned on by ears," Craft said. "But this society would not listen to me if I said 'I saw that man bare his ears — I just had to attack him.' That's how absurd the DA's argument is that two pieces of cloth covering protrusions prevent sexual attacks."

The women, who were arrested at Cobbs Hill Park June 21 on a charge of exposure of a person, claim that the law discriminates against women and is unconstitutional.

Assistant District Attorney Thomas J. Brilbeck said in his summation that he would not address the constitutionality issue until the hearing on the issue is held Oct. 28.

He did, however, point out the testimony of a defense witness who said the values of society would have to change before the law would change.

That witness, Dana Raphael, a Connecticut anthropologist, also said the law reflects the norms of society, although she could not say to what extent.

Kasperek said in his summation that "we all know it's not the facts that are on trial here, it's the law that's on trial."

Walz can convict or acquit the women based on the law, or he could dismiss the charges based on the constitutionality issue. If he finds the law unconstitutional, it would not be binding on other judges.

Lawyers from both sides have said they will appeal Walz's decision if they lose.

Walz scheduled oral arguments on the constitutionality of the law for Oct. 28. He did not give an indication how long it would be before he would issue a decision.

Besides Schloss, Craft and Seymour, the other women on trial were Kathy Reilly, Ramona Santorelli, Elise Jo Tooley and Lynn Zicari.

If convicted they would each face a maximum penalty of 15 days in jail, a $250 fine, or both.

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Deborah Seymour drapes an arm around the shoulders of Mary Lou Schloss as the women talk with Lynn Zicari about the trial.

Topfree 7's judge says trial damaged his campaign for state Supreme Court

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the Nov. 4 election, he said that simply hearing the trial during the past four days has set voters against him.

"I've been out making campaign appearances, and I've found a number of people who are disappointed that I gave these women valuable court time to air their views," Walz said after the completion of the trial.

The seven women were arrested for baring their breasts at Cobbs Hill Park June 21. They claim a state law barring women from going shirtless is discriminatory and unconstitutional.

Walz said yesterday he is not sorry that the case was assigned to him.

"I was doing my job, and if that hurts the campaign, so be it," Walz said.

Some political observers have said the trial may have had the opposite effect on Walz's campaign. Because the case drew a lot of attention from the local media, and daily coverage by national media, Walz has received much more exposure than his opponent, state Assemblyman Richard C. Wesley of Geneseo.

Walz, a Democrat, is running against Wesley, a Republican, for a state Supreme Court seat based in Monroe County, a seat that was vacated in December with the death of Justice Robert P. Kennedy.

Wesley said yesterday he wasn't sure what effect the trial had on Walz's campaign, but that it's "unfortunate" if it does hurt Walz's chances.

"He's just doing his job. I don't think it's fair, it's just unfortunate these things happen sometimes," Wesley said. "I knew it (the trial and publicity) was going to happen, but I didn't dwell on it. I set certain goals for myself and I can't labor over it."

Some in the legal community have voiced concerns over the taxpayers' cost of what they see as a "trivial" trial over the issue of whether women should be allowed to go topless in public.

"You don't put a price tag on justice," Walz said. "I'm not sorry it happened, I didn't ask for the case. But that's my job and I'll do it. (Some voters) don't understand that.

"I can't stop doing my job just because I'm running for election," he said.

Walz said yesterday that the women were appropriate in taking their case to court after failing to convince the state Legislature to change the law.

"On one level, it's a fairly trivial case — Can I take my top off on a beach?" Walz said. "On a deeper level," it's a question of male dominance over women and how much control women have over their own bodies, he said.

David R. Moss, a lawyer for five of the defendants, said last week that the women planned their protest at a time when they knew the case would be assigned to Walz, whom they viewed as the judge most likely to issue a decision in their favor.

That approach is commonly used in planned acts of civil disobedience, Moss said. Walz had no knowledge of the women or their planned protest beforehand, Moss said.

Walz said he knew from the day he arraigned the women in June that he would not have to decide the case before the election. It normally takes about seven months for a case to be completed, he said.

For that reason, Walz said, he never thought about what impact a decision in the case would have on the outcome of the election — whether it would alienate a large number of voters in the eight-county region that constitutes the Seventh Judicial District.

If he is elected to state Supreme Court, Walz will have to issue his decision in the breast case by Jan. 1, he said.

Walz took an active role in the trial. He asked what many observers called the key question in the trial when he questioned defense witness Dana Raphael whether the law was a reflection of community values.

Raphael said it was, to an extent, but that the women's protest signaled a drastic change in society's attitudes about women's breasts.